A.P.R.

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No.2451 of 2003

PETITIONERS:

1. Raymond Ltd., a company registered under the provisions of the Companies Act, 1913, having its registered office at Plot No.156/H No.2, Village- Zadgaon, Ratnagiri, Maharashtra - 415 612 and its corporate office at Mahindra Towers, B Wing, Pandurang Budhkar Marg, Worli, Mumbai - 400 018.

2. H. Sunder of Mumbai, Indian Inhabitant, aged 44 years having his office at Mahindra Towers, B Wing, Pandurang Budhkar Marg, Worli, Mumbai - 400 018.

-Versus-

RESPONDENTS:

1. The State of Chhattisgarh through the Secretary, Government of Chhattisgarh, Commercial Tax Department, D.K.S. Bhawan, Raipur.

2. The Collector of Stamp & District Registrar, Janjgir Champa, Chhattisgarh having his address at Collectorate Building, Janjgir-Champa (C.G.)

3. The Board of Revenue, Chhattisgarh having its office at Near Old Commissioner's Office, Bilaspur (C.G)

4. The Inspector General of Registration and Superintendent of Stamps, D.K.S. Bhawan, Mantralaya, G. E. Road, Raipur (C.G.)

POST FOR ORDER ON 10th September, 2003

Sd/-
L.C.BHADOO
Judge

9-11-September 2003

(224)

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Dr. A. M. Singhvi, Senior Advocate with Mr. V.K.Munshi, Mr. Rajendra Barot and Mr. B.P.Sharma, Advocates for the petitioners.

Dr. N. K. Shukla, Additional Advocate General with Mr. Ranbir Singh, Govt. Advocate for the State/respondents.

Before: Hon'ble Shri L.C. Bhadoo, J.

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ORDER

(Passed on 10th September, 2003)

1. The petitioners have preferred this writ petition under Article 226/227 read with Articles 14 and 19(1)(G) of the Constitution of India by which they have challenged the order dated 25th July, 2003 passed by the Board of Revenue, Chhattisgarh at Bilaspur. The Board of Revenue has held that the Board of Revenue being the Chief Controlling Revenue Authority has every jurisdiction to entertain a revision application under section 56(4) of the Indian Stamp Act, 1899 (for short 'Stamp Act') as amended by the State of Madhya Pradesh, against the order dated 16.01.2001 passed by the Collector of the Stamp District Janjgir Champa under section 32 of the Act after following the procedure as envisaged under section 31 of the Indian Stamp Act, 1899.

2. The petitioner's petition is that the Petitioner No.1 established a cement division at Gopalnagar, District- Janjgir Champa in the erstwhile State of Madhya Pradesh in the year 1982. The Govt. of Madhya Pradesh welcomed the setting up of the said cement division and granted several concessions to the Petitioner No.1. The petitioner No.1 also generated large revenue for the State of Madhya Pradesh and Central Government from the date it commenced operations by payment of sales tax, stamp duty, excise, royalty and cess on limestone, electricity charges etc.

3. The petitioners further mentioned that they also actively contributed for development of the area where they established the cement division and it's around area. In the year 1999 the Petitioner No.1 planed to centralize its focus and therefore decided to sell its cement division and after extensive discussion between the parties it was decided that the petitioner No.1 would sell the cement division to Lafarge India Limited, as such it was decided that the cement division comprising of several immovable properties, movable properties, established sales and distribution network, employees etc. would be transferred to the Lafarge. Only immovable properties that were proposed to be transferred to Lafarge India Limited required payment of appropriate stamp duty. It was decided by the parties that in order to accurately pre-determine the impact of

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stamp duty on the transaction an application should be made to respondent No.2 (Collector of Stamp and District Registrar) under Chapter III of the Stamp Act. Accordingly the Petitioner No.1 made an application to the Respondent No.2 on 12th December, 2000 for adjudication of the Stamp Duty that was to be payable on the market value of the immoveable assets, necessary details whereof including the details of the land proposed to be transferred and also the manner in which the lands were purchased, were provided to the Respondent No.2. Along with the application the petitioner also enclosed a copy of the report dated 14th November 2000 made by the Chartered Designated Valuer listing the immovable properties that were proposed to be transferred by a deed of Conveyance and the values that the valuer attributed to such properties. i.e. Ex.P/2. Respondent No.4 directed Mr. Madan Korpe to assist respondent No.2 in valuation of the properties. Vide order dated 5th January, 2001 the Collector and District Magistrate formed a committee to inspect the properties proposed to be transferred by a deed of Conveyance and to independently report on the value of the same. The said committee was comprised of five persons with a Chairman S.D.O. (Revenue).

4. According to the petitioners, the committee formed by the Collector inspected the factory situated at Gopal Nagar in the second week of January 2001, while starting process of valuation the committee started functioning from the office of Respondent No.2 situated at Janjgir Champa. Ultimately S.D.O. (Forest) Janjgir Champa also visited the site. Mr. Tigga, S.D.O. (B & R) P.W.D. was given the responsibility to compute the value of the structures of the said property. Mr. Tigga visited the said property in the 1st week of January 2001. The said committee visited the site, factory and land and examined all the properties. They also checked the details of the mining lease and records maintained in the plant of the Petitioner No.1. Thereafter said committee submitted its report.

5. Based on the report submitted by the committee the District Registrar passed an order for adjudication dated 16th January, 2001 under section 31 of the Stamp Act that Rs. 3,74,90,300/- is payable as stamp duty. Accordingly the petitioner No.1 paid the stamp duty of Rs. 3,74,90,300/- and registration charges Rs. 33,75,601/-. The

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Respondent No.2 put an endorsement on the said Deed of Conveyance as per the provisions of Section 32 of the Stamp Act. Therefore, as per the Act the Deed of Conveyance is deemed to be duly stamped and the said deed of conveyance was thereafter duly registered.

6. Thereafter on 22nd March, 2001 the Respondent No.1 filed a revision application before the Board of Revenue, Gwalior seeking that the order dated 16th January, 2001 be revised.

7. The Lafarge India Limited informed the Petitioner No.1 that pending hearing and disposal of the revision the Respondent No.4 directed the Collector and District Magistrate, Janjgir-Champa, who addressed the order dt. 10th December, 2001 to the Collector of Stamps, D.F.O. and Executive Engineer (B & R) to revalue the assets transferred by the Petitioner No.1 to the Lafarge India Limited. In the meanwhile notice issued by the Respondent No.3 was served upon the Petitioner No.1 and it was said that the revaluation was sought to be done under section 28 of the M.P. Land Revenue Code, 1959 and the Stamp Act.

8. Petitioner No.1 moved an interim application before the Respondent No.3 on 6th February 2002 and prayed that the Respondent No.3 does not have jurisdiction to try the revision application. The said interim application came up for hearing and ultimately after hearing the said application was rejected by the impugned order dated 25th July 2003.

9. It has further been mentioned that respondent No.3 failed to appreciate that such revision application is not maintainable under section 56(4) of the Stamp Act read with Sections 31 and 32 of the Act. The revision is wholly without jurisdiction. After the order of the Collector and issuance of the certificate under section 32 of the Stamp Act the Deed of Conveyance is deemed to be duly stamped and thereafter respondent No.3 does not have the jurisdiction to entertain the revision application. As per Section 56(1) of the Stamp Act the Respondent No.3 will have the jurisdiction upon the powers exercised by the Respondent No.2 under Chapter IV and V and under clause (a) of the first proviso of Section 26 of the Act and the Respondent No.3 Board of Revenue has no jurisdiction to revise the

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order and certificate given by the Collector of Stamp and District Registrar, Janjgir Champa under section 32 of the Stamp Act which falls under Chapter III. Sub-sections (2) and (3) of Section 56 also makes it clear that no revision shall lie upon an order of adjudication under section 31 of the Stamp Act. Section 56(2) provides that if any Collector acting under section 31, 40 and 41 'feels doubt as to the amount of duty with which any instrument is chargeable' he may draw up a statement of the case, and refers it for the decision of the Chief Controlling Revenue Authority for its decision/opinion. Even under Section 56 (4) of the Stamp Act as amended (M.P. Amendment) Act, 1990 w.e.f. 21st January, 1991 no revision or appeal is available. While passing the impugned order the Board of Revenue failed to appreciate that any instrument upon which an endorsement has been made shall be deemed to be duly stamped and no revision is entertainable under section 56(4) of the Stamp Act. If the legislative intention was to provide revision of a certificate granted under section 32 of the Stamp Act then the Amendment Act of Section 56 ought to have specifically given the powers to do so, as has been specifically provided in Section 53-A of the Bombay Stamp Act, 1958. Therefore a writ of certiorari or any other order calling records and proceedings of the revision application pending before the Respondent No.3 be issued and after examining the legality and validity of the impugned order dated 25th July 2003 be quashed and set aside.

10. Dr. N. K. Shukla, Additional Advocate General accepted the notice on behalf of the Respondents/State.

11. I have heard Dr. A.M. Singhvi, learned Senior Counsel for the petitioners and Dr. N. K. Shukla, learned Additional Advocate General on behalf of the Respondents on admission.

12. The main argument of learned Senior Advocate appearing on behalf of the petitioners is that as per the scheme of the Indian Stamp Act after filing the application by petitioner under section 31 of the Stamp Act, the Collector of Stamp and District Magistrate, Janjgir Champa made an enquiry and constituted a committee for evaluation of the property which was to be transferred. The members of the said committee made a site survey and thereafter

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they submitted a report and after consideration of the said report and other evidence, the Collector of Stamps accepted the report and ordered the petitioner to pay the stamp duty of Rs.3,74,90,300/- and the registration charges of Rs.33,75,601. Accordingly, the stamps and charges were paid and thereafter the Collector endorsed the deed of conveyance as duly stamped and as per the provisions of sub-section (3) of Section 32 the said certificate shall be deemed to be duly stamped.

13. Learned counsel for the petitioner further argued that the provisions of Section 56 which deals with the reference and revision to Chief Controlling Revenue Authority i.e. Board of Revenue sub-section (1) of Section 56 lays down that the powers exercised by the Collector under Chapter IV and V and clause (a) of the first proviso of Section 26 shall be subject to the control of the Chief Revenue Authority and in case if the Collector acting under section 31, 40 and 41 of the Stamp Act feels doubt as to the amount of duty for which the endorsement is chargeable he may prepare the statement of the case and refer it to the Chief Controlling Revenue Authority for its opinion .

14. Therefore, the legislature has deliberately left out the provisions of Section 31 and 32 of the Act out of the purview of Board of Revenue and no party is entitled to file any revision. It is only the Collector, if he has any doubt about the amount of duty on which the instrument is chargeable then he shall refer the matter to the Board of Revenue for its decision/opinion. In this case the Collector was not having any doubt as he had constituted a committee and the said committee submitted its report and he accepted the report of the committee being reasonable and has issued the certificate under section 32 of the Act. Therefore, no revision lies. He further argued that provisions of sub-section (4) of Section 56 as amended by the State of Madhya Pradesh does not envisage any revision against the order passed by the Collector of stamps under sections 31 and 32 of the Stamp Act. Therefore, the impugned order is illegal and does not confer with the requirement of provisions of Section 56.

15. On the other hand Dr. N. K. Shukla, learned Additional Advocate General supported the impugned order passed by the Board of

Revenue and submitted that if we look into the objects and reasons for inserting sub-section (4) of Section 56 by the State of M.P. it is clear that the objects behind inserting sub-section (4) of Section 56 was to enable any party aggrieved by any order of the Collector to move a revision before the Board of Revenue.

16. Mr. Singhvi while referring the submissions of Dr. Shukla argued that as per the law laid down by the Apex Court in the case reported in A.I.R. 1963 S.C. 1241 (V 50 C 188) State of West Bengal Vs. Union of India, in para-13 it has been held that the objects and reasons cannot be used to determine the true meaning and effect the substantive provisions of the statute.

17. In order to appreciate the arguments advanced by both the sides, it will be beneficial to reproduce Sections 31, 32 & 56 of the Act.

> **"31. Adjudication as to proper stamp.** – (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount [not exceeding five rupees and not less than (fifty naya paise)] as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.
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> (2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly."
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> **"32. Certificate by Collector.** – (1) When an instrument brought to the Collector under Section 31 is, in his opinion, one of a description chargeable with duty, and –
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> (a) the Collector determines that it is already fully stamped, or
>
> (b) the duty determined by the Collector under Section 31, or such a sum as, with the duty already paid in respect of the instrument is equal to the duty so determined, has been paid,

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the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped."

"**56. Control of, and statement of case to, Chief Controlling Revenue Authority**. – (1) The powers exercisable by a Collector under Chapter IV and Chapter V, and under clause (a) of the first proviso to Section 26, shall in all cases be subject to the Control of the Chief Controlling Revenue Authority.

(2) If any Collector acting of under Section 31, Section 40 or Section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.

(3) Such authority shall, after giving a reasonable opportunity of being heard to the parties concerned, consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

(4) The Chief Controlling Revenue Authority may, on its own motion or on the application by any party, at any time for the purpose of satisfying itself as to the amounts with which the instrument is chargeable with duty, call for and examine the record of any case disposed of by the Collector and may pass such order in reference thereto as it thinks fit.

Provided that it shall not vary or reverse any order unless notice has been served on the party concerned and opportunity given to him for being heard.

Provided further that no application for revision shall be:

(i) entertained against an order appealable under this Act;

(ii) entertained unless presented witness ninety days from the date of the order and in computing the period aforesaid, the time requisite for obtaining copy of the said order shall be excluded."

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18. A perusal of Section 56 (4), as amended by the State of Madhya Pradesh reveals that before amending this Section the order of the Collector and certificate issued by the Collector under section 32 of the Act after following the procedure under section 31 of the Stamp Act was final and most of the party was entitled to challenge the order of the Collector Stamp, before the Board of Revenue, even if he was aggrieved by the order of the Collector.

19. Therefore, considering the above difficulties faced by the aggrieved persons as well as by the State, the State of Madhya Pradesh introduced the Amendment Bill in the year 1990 and clause 3 of the Objects and Reasons says as there is no provision under sections 31, 40 and 41 of the Indian Stamp Act, 1889 for giving reasonable opportunity of hearing to the parties and the order passed by the District Collector Stamps is determinative and there is no provision for filing any appeal or revision against the said order by the aggrieved parties and many times it affects the Government revenue also. Therefore, to rectify above defects and to incorporate the provision of revision the amendment of Section 56 has been introduced. Therefore, reading of the above clause of objects and reasons makes it clear as to why sub-section (3) and (4) of Section 56 was inserted by the legislature of the State of M.P.

20. A perusal of para-13 of the judgment cited by learned counsel for the petitioner lays down that "It is well-settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation."

21. As mentioned above clause-3 of the statements and objects clearly lays down that since there was no provision for filing an appeal or revision against the order passed by the Collector Stamps under sections 31, 40 and 41 of the Stamp Acts, the order of the Collector is determinative and the parties are not entitled to file appeal or revision against the order of the Collector Stamps, the Govt. revenue is also affected therefore in order to provide provision of revision

against the order of the Collector, the said amendment has been inserted for enabling the parties to file revision against the order of the Collector.

22. In the above light and background, if we look into the sub-section (4) of Section 56 it clearly prescribes that the Chief Controlling Revenue Authority i.e. the Board of Revenue on its own motion or on the application by any party, at any time, for the purpose of satisfying itself as to the amounts with which the instrument is chargeable with duty, **call for and examine the records of any case disposed of by the Collector and may pass such order in reference thereto as it thinks fit**. The wordings of this sub-section are clear and no ambiguity is left out to interpret it in any other ways but to mean that the aggrieved party can file a revision against the order passed by the Collector Stamps under Sections 31, 32, 40, 41 & 42 of the Act, the Board of Revenue is also entitled to move on its own motion.

23. If we look into the following words of sub-section (4) that "for the purpose of satisfying itself as to the amounts with which the instrument is chargeable with duty, call for and examine the record of any case disposed of by the Collector and may pass such order in reference thereto as it thinks fit", these words itself relates back to the powers exercised by the Collector under Section 31, 32, 40, 41 & 42 of the Act. As per Sections 31, 32, 40, 41 & 42 of the Act the Collector of Stamps has vested with power to decide about the chargeability of an instrument with the stamp. In this case, the Collector got conducted an enquiry as envisaged under section 31 of the Act. The Collector had satisfied himself after conducting an enquiry based on the documents filed by the petitioners and also looking in to the committee's report constituted by the Collector of Stamps and he passed the order about the chargeability of the instrument with duty. As the Collector Stamps has to pass an order after necessary enquiry about the chargeability of the instruments and sub-section (4) of Section 56 says that the Board of Revenue for the purpose of satisfying himself about the chargeability of an instrument with the stamp duty can call for and examine the record of any case disposed of by the Collector means 'the case' disposed of by the Collector under Sections 31, 32, 40, 41 & 42 of the Stamp

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Act. Therefore, the order passed by the Collector under Sections 31, 32, 40, 41 & 42 of the Stamps Act is revisable under sub-section (4) of Section 56 of the Stamps Act.

24. Therefore, if we read the sub-section (4) of Section 56 along with Sections 31, 32, 40, 41 & 42 of the Indian Stamp Act it leaves no manner of doubt that sub-section (4) of Section 56 relates back to the power exercised by the Collector of Stamps under Sections 31, 32, 40, 41 & 42 of the Indian Stamp Act about the chargeability of an instrument with Stamp.

25. Now coming to the argument of learned counsel for the petitioner that if we compare the provisions of the M.P. Amendment Act with the provisions of the Maharashtra Stamp Act in which section 53-A, a clear provision has been made for filing a revision against the decision of the Collector but such provision has not been made under section 56(4) as amended by the State of M.P. It is true that in sub-section (4) of Section 56 it has not been clearly mentioned that if the Chief Controlling Authority is not satisfied with the order of the Collector made under sections 31, 32, 40, 41 & 42 of the Stamp Act then the aggrieved party is entitled to file a revision before the Board of Revenue. But it is for the concerned State to carry out the amendment in its own way. Even if there is no such clear mention of particular Sections as is provided in Section 53-A of the Maharashtra Act, even then we have to carry out the meaning of sub-section (4) of Section 56 in the light of the amendment inserted by the State of M.P. and in this context we can take the help of objects and reasons behind bringing out this amendment and insertion of sub-section (4) of Section 56 of the Stamp Act.

26. As has been mentioned above the wordings of sub-section (4) of Section 56 it is so clear and no ambiguity is left out to interpret anything else but to interpret that it relates to the powers exercised by the Collector under Sections 31, 32, 40, 41 & 42 of the Stamp Act. Because in sub-section (4) the Board of Revenue can satisfy itself about the fact with which the instrument is chargeable with the duty and the Collector has been vested with the powers to decide about the chargeability of the instrument with the duty under Sections 31, 32, 40, 41 & 42 of the Act, that is why this sub-

section (4) of Section 56 has been inserted in order to take care of the order passed by the Collector for chargeability of instrument with duty under sections 31, 32, 40, 41 & 42 of the Act.

27. In view of the above, I am of the opinion that the Board of Revenue in passing the impugned order has not committed any illegality or irregularity as the Board of Revenue has jurisdiction under sub-section (4) of Section 56 of the Stamp Act to hear a revision against the order passed by the Collector under sections 31 and 32 of the Indian Stamp Act. Therefore, this writ petition for the reasons given hereinabove is without force and the same is liable to be dismissed and is dismissed in limine at the admission stage itself.

Sd/-
L.C.BHADOO
Judge

Thakur